

**United States Department of Labor
Employees' Compensation Appeals Board**

W.M., Appellant)
and) Docket No. 12-748
U.S. POSTAL SERVICE, POST OFFICE,) Issued: January 11, 2013
Rochester, NY, Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 15, 2012 appellant filed a timely appeal from a February 2, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for a schedule award. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has established that he sustained permanent impairment of his left leg.

On appeal, appellant argues that he is entitled to a schedule award. He contends that, due to his injury, he had to retire early. Appellant walks with a limp and has not recovered 100 percent from his employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 24, 2010 appellant, then a 60-year-old mail handler, filed a traumatic injury claim alleging that he strained his left knee that day while moving a wooden skid. On June 22, 2010 OWCP accepted his claim for left knee medial meniscus tear. On July 23, 2010 appellant underwent an arthroscopic partial medial meniscectomy of his left knee.

On July 30, 2011 appellant filed a claim for a schedule award. In a July 26, 2011 report, Dr. Frank Pupparo, a Board-certified orthopedic surgeon, stated that appellant had considerable discomfort, particularly in the medial side of the left knee, one year following arthroscopic surgery. He opined that appellant had reached maximum medical improvement and that his schedule loss was 15 percent due to status post medial meniscectomy of the left knee approximately one year ago.

On August 11, 2011 OWCP accepted appellant's claim for other and unspecified derangement of left medial meniscus. It informed him of the necessity of submitting a report in support of his claim for a schedule award that included an impairment rating based on the criteria of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*).

By letter dated August 17, 2010, OWCP accepted appellant's claim for a recurrence on July 23, 2010. With regard to his schedule award, it again informed him to submit a rationalized impairment rating applying the A.M.A., *Guides*.

By letter dated September 6, 2011, appellant informed OWCP that his doctor's office misplaced OWCP's letter that he had delivered a new one; he was not sure whether his doctor would respond in time.

By decision dated September 15, 2011, OWCP denied appellant's claim for a schedule award.

By letter dated October 31, 2011, appellant requested reconsideration. In a September 9, 2011 report, Dr. Pupparo stated that appellant had a 10 percent loss of use of his left knee. He noted that appellant underwent an arthroscopic partial medial meniscectomy of his left knee on July 23, 2010 for a work-related injury which occurred on February 24, 2010. Dr. Pupparo noted that it had been over a year since appellant had surgery and he had reached maximum medical improvement. He rated the scheduled loss under the medical guidelines of the New York Workers' Compensation Board dated June 1996.

By decision dated February 2, 2012, OWCP denied appellant's claim for a schedule award. It found that Dr. Pupparo did not list the date that maximum medical improvement had been reached or use the sixth edition of the A.M.A., *Guides* in rating of permanent impairment.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations,³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.⁵ For decisions issued beginning May 1, 2009, the sixth edition of the A.M.A., *Guides*, will be used.⁶

ANALYSIS

Appellant's claim was accepted for a left knee injury. OWCP advised him of the necessity of submitting an impairment rating in accordance with the A.M.A., *Guides*. The requested medical evidence was not received.⁷ The Board notes that Dr. Pupparo's report is of limited probative value. Dr. Pupparo determined that appellant had a 10 percent impairment to his left knee pursuant to the New York Workers' Compensation Board's medical guidelines. He did not rate appellant under the A.M.A., *Guides*, the standard adopted by OWCP and approved by the Board as appropriate for evaluating schedule losses.⁸ Dr. Pupparo did not provide a sufficiently well-rationalized opinion or include clinical findings that would assist an OWCP medical adviser or the Board in visualizing the impairment. As appellant did not submit sufficient medical evidence to support his claim of a schedule award, OWCP properly denied his claim.

Appellant may request a schedule award or an increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established that he is entitled to a schedule award.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ *Id.* at § 10.404(a).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁶ FECA Bulletin 09-03 (issued March 15, 2009).

⁷ *Id.*

⁸ See N.T., Docket No. 09-814 (issued November 2, 2009).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 2, 2012 is affirmed.

Issued: January 11, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board